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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,612	03/25/2004	Christopher J. Twigg	PC-1434CIP	7256

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EXAMINER

CONLEY, FREDRICK C

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 03/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/809,612

Applicant(s)

TWIGG, CHRISTOPHER J.

Examiner

FREDRICK C CONLEY

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/25/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-17 and 28-30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/677,828. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Objections

Claims 16-17 and 27 are objected to because of the following informalities: **"the cot.17. The** cot of claim 16" and "to assist individuals **reach higher** elevations".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claims 18-25, the phrase "hutch-like" renders the claim(s) indefinite because it is unclear what is meant by hutch-like to merely describe a compartment thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 7-8, and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,846,204 to Sok Kyu.

Claim 1, Sok Kyu discloses a portable and collapsible cot, comprising:

a flexible planar surface layer 14; and

leg members 6 for both cross-bracing and supporting the planar surface layer

over a ground surface, the leg members being moveable between an assembled

Art Unit: 3673

position and a folded position, where the assembled position fully supports weighted objects being placed on the planar surface layer, and the folded position has the cot in a collapsed position allowing the cot to become portable and easy to carry (col. 1 lines 20-25).

Claim 2, wherein the leg members include:

a first set of rods 7 pivotably attached to one another for supporting a left side end of the cot that are moveable between a substantially crossed position while the cot is in the assembled position to a substantially parallel position while the cot is in a folded position, and

a second set of rods 7 pivotably attached to one another for supporting a right side end of the cot opposite the left side end, that moveable between a substantially crossed position while the cot is in the assembled position to a substantially parallel position while the cot is in the folded position.

Claim 3, wherein the leg members further include:

a middle set of rods 7 for supporting a mid-portion of the cot located substantially midway between the left side end and the right side end, that are moveable between a substantially crossed position while the cot is in the assembled position to a substantially parallel position while the cot is in a folded position.

Claim 7, wherein the leg members include:

a front pair of rods 7 pivotably attached to one another for supporting a front side of the cot that are moveable between a substantially crossed position while the cot is in the assembled position to a substantially parallel position when the cot is in a folded

Art Unit: 3673

the assembled position, and

a rear pair of rods 7 pivotably attached to one another for supporting a rear side of the cot opposite the front side, that are moveable between a substantially crossed position while the cot is in the assembled position to a substantially parallel position when the cot is in the folded position.

Claim 8, wherein the front pair of rods 7 and the rear pair of rods each include: two sets of pairs 7 of the pivotable rods adjacent to one another that are moveable between substantially crossed positions while the cot is in the assembled position to the substantially parallel positions when the cot is in the folded position.

Claim 14, further comprising: flexible side walls attached to and extending upward from at least one perimeter edge from the surface layer (fig. 10).

Claim 15, wherein the side walls further include:

a left side wall attached to and extending upward from a left side perimeter edge of the surface layer;

a right side wall attached to and extending upward from a right side perimeter edge of the surface layer, opposite the left side wall, and

a rear side wall attached to and extending upward from a rear side perimeter edge of the surface layer located between the left side wall and the right side wall, wherein the left side walls the right side wall, and the rear side wall keep the object on the surface layer from falling off the left, the right and rear side perimeter edges of the cot (fig. 10).

Claim 16, further comprising: a removable canopy 10 having ends attached to

Art Unit: 3673

the corner edges of the cot.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,846,204 to Sok Kyu in view of U.S. Pat. No. 6,167,898 to Larga et al.

In reference to claim 20 Sok Kyu discloses all of the Applicant's claimed limitations except for having a carry bag. Larga discloses a carry bag 40 for a support. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ a carry bag as taught by Larga with the cot of Sok Kyu in order to carry the cot when it is not in the assembled position. Sok Kyu discloses all of the Applicant's claimed limitations except for bag having dimension of up to 30 inches by 8 inches by 8 inches. It would have been obvious to one having ordinary skill in the art at the time of the invention to have the dimensions stated above, since Applicant has not disclosed that the dimensions are critical and it would appear that the dimensions of Sok Kyu would perform equally well.

Claims 1-3, 7-8, 12, 14-22, and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,644,329 to Tomason in view of U.S. Pat. No. 4,846,204 to Sok Kyu.

Art Unit: 3673

Claim 1, Tomason discloses a portable cot having a flexible planar surface layer 108 and leg members 102. Tomason fails to disclose collapsible leg members. Sok Kyu discloses collapsible leg members (6,7). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ collapsible leg members as taught by Sok Kyu with the cot of Tomason in order to provide a portable cot frame structure.

Claim 2, wherein the leg members include:

a first set of rods 7 pivotably attached to one another for supporting a left side end of the cot that are moveable between a substantially crossed position while the cot is in the assembled position to a substantially parallel position while the cot is in a folded position, and

a second set of rods 7 pivotably attached to one another for supporting a right side end of the cot opposite the left side end, that moveable between a substantially crossed position while the cot is in the assembled position to a substantially parallel position while the cot is in the folded position (Sok Kyu).

Claim 3, wherein the leg members further include:

a middle set of rods 7 for supporting a mid-portion of the cot located substantially midway between the left side end and the right side end, that are moveable between a substantially crossed position while the cot is in the assembled position to a substantially parallel position while the cot is in a folded position (Sok Kyu).

Claim 7, wherein the leg members include:

a front pair of rods 7 pivotably attached to one another for supporting a front side

Art Unit: 3673

of the cot that are moveable between a substantially crossed position while the cot is in the assembled position to a substantially parallel position when the cot is in a folded position, and

a rear pair of rods 7 pivotably attached to one another for supporting a rear side of the cot opposite the front side, that are moveable between a substantially crossed position while the cot is in the assembled position to a substantially parallel position when the cot is in the folded position.

Claim 8, wherein the front pair of rods 7 and the rear pair of rods each include:

two sets of pairs 7 of the pivotable rods adjacent to one another that are moveable between substantially crossed positions while the cot is in the assembled position to the substantially parallel positions when the cot is in the folded position.

Claim 12, further comprising first straps (col. 3 lines 12-19) along perimeter edges attached underneath the surface layer for enhancing strength of the surface layer to support the weighted object thereon (Tomason).

Claim 14, further comprising: flexible side walls attached to and extending upward from at least one perimeter edge from the surface layer (col. 2 lines 42-45)(Tomason).

Claim 15, wherein the side walls further include;

a left side wall in the form of a sleeve attached to and extending upward from a left side perimeter edge of the surface layer,

a right side wall in the form of a sleeve attached to and extending upward from a right side perimeter edge of the surface layer, opposite the left side wall; and

Art Unit: 3673

a rear side wall in the form of a sleeve attached to and extending upward from a rear side perimeter edge of the surface layer located between the left side wall and the right side wall,

wherein the left side walls the right side wall, and the rear side wall are capable of keeping an the object on the surface layer from falling off the left, the right and rear side perimeter edges of the cot (col. 2 lines 45-47)(Tomason).

Claim 16, further comprising: a removable canopy 20 having ends attached to the corner edges of the cot (Thomason)

Claim 17, further comprising;

a first upside down U-shaped support 62 attached to and extending upward from one side of the cot; and

a second upside down U-shaped support 64 attached to and extending upward from another side of the cot opposite the one side, wherein the first U-shaped support and the second U-shaped support hold the canopy in a fixed position above the cot.

Claim 18, a removable compartment 20 having ends attached to the sidewalls of the cot (fig. 4).

Claim 19, a first upside down U-shaped support 62 attached to and extending upward from one side of the cot; and

a second upside down U-shaped support 64 attached to and extending upward from another side of the cot opposite the one side, wherein the first U-shaped support

Art Unit: 3673

and the second U-shaped support are connected by a plurality of straps (66,70, 82), including straps defined as a long pliable piece of material in the form of sleeves (66,70), to stabilize and hold the compartment in a fixed position above the cot.

Claim 20, wherein the strap 66 connecting the first U-shaped support and the second U-shaped support is positioned to support the top mid-section of the compartment (fig. 2).

Claim 21, further comprising:

a means 80 for fastening the sidewalls to the compartment smoothly and securely.

Claim 22, wherein the compartment is removably attached to the left sidewall, right sidewall and rear sidewall.

Claims 26-27, with regards to the Applicant's recitation "wherein the surface layer is used as a stair step or as a platform to assist individuals reaching higher elevations" a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

With regards to claims 28-29, Tomason discloses all of the Applicant's claimed limitations except for the cot having a length of 46 inches, a width of 24 inches, and an overall weight of up to 15 pounds. It would have been obvious to one having ordinary

Art Unit: 3673

skill in the art at the time of the invention to have the dimensions and weight stated above, since Applicant has not disclosed that the dimensions and weight are critical and it would appear that the dimensions and weight of Tomason would perform equally well.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Pat. No. 6,644,329 to Tomason in view of U.S. Pat. No. 4,846,204 to Sok Kyu and further in view of 6,134,727 to Hwang.

In reference to claim 13, Tomason discloses all of the Applicant's claimed limitations except for second straps in a crossed pattern attached underneath the surface layer.

Hwang discloses a cot frame having straps in a crossed pattern attached underneath a surface layer (col. 1 lines 50-53). It would have been obvious to one having ordinary skill in the art at the time of the invention to employ straps as taught by Hwang with the cot of Tomason in order to provide support for the surface layer.

Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,644,329 to Tomason in view of U.S. Pat. No. 4,846,204 to Sok Kyu., and further in view of U.S. Pat. No. 3,848,279 to Ipsen.

Claims 23, Tomason discloses all of the Applicant's claimed limitations wherein the compartment further includes lightweight, flexible closely woven fabric for at least one side and openly woven material (46,56) for at least one side of the enclosure. Tomason fails to disclose the enclosure defined by a total of five sides. Ipsen discloses an enclosure defined by a total of five sides (fig. 1). It would have been obvious to employ a tent having five sides in order to provide a larger enclosed space.

Art Unit: 3673

Claims 24-25, Tomason discloses all of the Applicant's claimed limitations except for having a front cover with zippers. Ipsen discloses a compartment having a front cover closed with zippers (22a,22b). It would have been obvious to employ zippers as taught by Ipsen in order allow an occupant to open either the screen or the access flap from either the interior or the exterior of the unit.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C CONLEY whose telephone number is 703-308-7468. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC



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